

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD OMARI GAMBLE,

Defendant-Appellant.

UNPUBLISHED

May 1, 2008

No. 274067

Oakland Circuit Court

LC No. 2002-187918-FH

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant appeals by right his jury trial conviction for possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). Defendant was sentenced to 30 days in jail and 18 months' probation. We affirm.

Defendant argues that there was insufficient evidence to convict him. We disagree.

This Court reviews claims of insufficient evidence de novo, viewing the evidence in the light most favorable to the prosecutor, to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). Pertinent to this case, the elements of possession with intent to deliver marijuana are (1) that the recovered substance is marijuana, and (2) that the defendant knowingly possessed the substance intending to deliver it. See *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Defendant only challenges whether the evidence is sufficient to show that he knowingly possessed the marijuana and intended to deliver it.

Because defendant did not open the package, proof of defendant's knowledge of the contents of the package must be established by circumstantial evidence. Such evidence, and the inferences that arise there from, may properly constitute proof of knowing possession. *Id.* at 526; *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005). Here, the package was addressed to defendant's apartment, but not to him personally. Defendant's name, however, was the only name on the lease for that apartment. Defendant signed for and accepted the package. He took the package to his car without opening it. Most significantly, the officers that interviewed him testified that defendant indicated that he had some knowledge regarding the party that sent the package in Arizona. It is the role of the jury to weigh the credibility of this testimony; they apparently credited this testimony. *Wolfe, supra* at 514-515. A rational jury

could then conclude that, because defendant was actively moving the package and professed to have some information regarding its origin, he had knowledge of its contents despite the fact that it was mailed to a different name at his address.

Defendant also claims that there was insufficient evidence to show intent to deliver. “Actual delivery is not required to prove intent to deliver.” *People v Fetterley*, 229 Mich App 511, 517; 583 NW2d 199 (1998). Because direct evidence of a person’s state of mind is rare, intent may be proved from the facts and circumstances, and minimal circumstantial evidence is sufficient. *Id.* at 517-518. Moreover, intent to deliver can be inferred from the quantity and packaging of the drugs, as well as the circumstances of the arrest. *Wolfe, supra* at 524.

One of the four bags in the package was weighed and analyzed. It was found to contain 424.4 grams of marijuana. The officer-in-charge of the case testified that one could make two or three “joints” from one gram of marijuana. He also testified that the marijuana in the package had a “street value” of between \$6,000 and \$8,000. Further, the police arrested defendant after he left his apartment with package. A rational jury could conclude from these circumstances that defendant intended the marijuana for delivery rather than merely for personal use.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey